pay costs. The Order as to costs is therefore varied so that costs must follow the event. The appellant shall pay half of the costs of this appeal, as taxed, to all respondents except No. 4. Deposit to be paid out to account of taxed costs.

Gill C.J. (Malaya) and **Wan Suleiman F.J.** concurred.

Appeal dismissed.

Solicitors: *Mah-Kok & Din; Skrine & Co.; Ng Ek Teong & Partners; Eugene Lye & Co.*

STATION HOTELS BERHAD v. MALAYAN RAILWAY ADMINISTRATION

[F.C. (Gill C.J. (Malaya), Ali and Ong Hock Sim F.JJ.) November 13, 1976]

[Kuala Lumpur — Federal Court Civil Appeal No. 60 of 1976]

Landlord and Tenant — Whether premises are rent controlled premises — Whether property controlled and managed by Railway Administration is property belonging to the Government — Whether revocation or refusal to renew lease offends Article 153 of the Federal Constitution — Control of Rent Act, 1966, s. 4 — Railway Ordinance, 1948, ss. 4(1), 15(1) — R.S.C. 1957, O.14 & O.25 — Federal Constitution, arts. 13 and 153.

Constitutional Law — Rights of property — Cases of contractual rights — Federal Constitution, arts. 13 and 153.

In this case the respondents had brought an action against the appellants for vacant possession of the premises known as Station Hotel, Kuala Lumpur, which had been let to the appellants under a lease which had expired. The respondents applied for summary judgment under Order 14. The appellants raised three defences (a) that the premises were rent controlled premises; (b) that the appellants had been deprived of property without compensation and (c) that the refusal to renew the lease was in breach of Article 153 of the Federal Constitution. The learned trial judge rejected all three defences saying in his judgment that he was disposing of them before trial under Order 25 of the Rules of the Supreme Court. On appeal it was argued (a) that the learned judge was wrong in finding that the appellant was not a tenant protected by the provisions of the Control of Rent Ordinance (b) that the learned judge was wrong in holding that the revocation or refusal to renew the relevant leases and terms in favour of the appellant did not offend the provisions of Article 153 Clauses (7) and (8) of the Federal Constitution.

Held, (Gill C.J. and Ali F.J., Ong Hock Sim F.J. dissenting): (1) the land on which the hotel stood was the property of the Federal Government so that it was exempt from the operation of the Control of Rent Act;

(2) Article 153 of the Federal Constitution has no application to cases of contractual rights.

Cases referred to:-

(1) *Yung Chiang* v. *Bong Tjhin Oi* [1973] 2 M.L.J. 137.

(2) *Bhagwani Kishore Tandon* v. *Deputy Commissioner, Rewa District* A.I.R. (1952) Vindhya Pradesh 78.

(3) *Gendalal Motilal* v. *Mathuradas Ramprasad* A.I.R. 1951 Nag. 32.

(4) *Jupiter General Insurance Co. Ltd.* v. *Rajagopalan & Anor.* A.I.R. 1952 Punjab 8.

(5) *Bhaghet Rajinder Kumar Sawhney & Anor.* v. *State of Jammu and Kashmir* A.I.R. 1960 J. & K. 50.

(6) *Rameshwar Proshad* v. *Commissioners Land Reform and Jagirs Madhya Barat & Ors.* A.I.R. 1959 S.C. 498.

(7) *Achutan* v. *State of Kerala & Ors.* A.I.R. 1959 S.C. 490.

(8) *Ramsden v. Dyson* (1866) L.R. 1 H.L. 129.

(9) *Plimmer* v. *Mayor etc. of City of Wellington* (1884) 9 App. Cas. 699.

(10) *Soong Co. Ltd.* v. *Teoh Cheng Sim* [1956] M.L.J. 16.

(11) *Lee Eng Teh & Ors.* v. *Teh Thiang Seong & Anor.* [1967] 1 M.L.J. 42.

HIGH COURT.

K. Thayalan for the plaintiff.

Roger Tan for the defendant.

The following judgment was delivered in the High Court on May 3, 1976:

Chang Min Tat J.: This is an 0.14 application to sign final judgment but can, on the pleadings which mainly raise defences at law, be regarded as a proceeding in lieu of demurrer under Order 25 Rules of the Supreme Court and disposed of as such.

The plaintiff is the Malayan Railway Administration, a corporation sole under section 4(1) of the Railway Ordinance 1948. Its right to enter into contracts and sue thereon is provided by section 4(2). The defendant was the lessee under a lease in writing of a building known popularly as the Station Hotel Kuala Lumpur holding the same of the plaintiff for a term certain, and was in fact incorporated to hold the lease and operate the hotel.

The relevant lease was for a term of five years commencing from January 1, 1968. It was never registered but there could be no doubt about its effectiveness as an agreement to let. It contained the usual terms and conditions of a lease, but it signally contained no provision for a further term. However, when the term came to an end by the effluxion of time, an extension of one year was agreed to in writing between the parties. The extension expired on December 31, 1973.

When the defendant held over, the plaintiff took action to recover possession. It issued a writ, K.L. Civil Suit No. 870/74 on July 22, 1974 but it accepted tenders of rent for part of the period after the expiry of the term and on the advice it received that the defence of a further monthly tenancy could possibly succeed, it withdrew this action and it also caused a notice to be sent to the defendant, giving a calendar month's notice terminating the purported new tenancy. The notice expired on March 31, 1975. The present action was then taken.

The defendant continued to rely on this further monthly tenancy. By so doing, it had, as a result, removed from itself any possibility of reliance on whether the notice of termination was reasonably adequate under the circumstances.

To the Order 14 application, the defendant raised three defences at law. The first was that the premises were rent controlled premises. The second and third were based on constitutional provisions.

It was alleged by the defendant and not denied by the plaintiff that the defendant had managed the hotel business at the Railway Station premises since 1935. It meant that the lease entered into on January 1, 1965 was the last of a series of leases between the owner of the hotel premises and the defendant. It

also meant that there was evidence common to both sides that the said building was erected before January 31, 1948 and came within section 4(2)(a) of the Control of Rent Act, 1966. No reliance therefore was required to be laid on the alleged presumption, said by Mr. R. Tan, learned counsel for the defendant to have been established in *Yong Chiang* v. *Bong Tjhin Oi*[1] that the law presumes all premises to be rent-controlled until the contrary is proved. With respect, I do not think that that case is any authority for the proposition suggested. But that point is academic. In view of the undeniable evidence that the premises were in existence before January 31, 1948 and therefore came within section 4(a) of the Control of Rent Act, 1966, they were rent-controlled, unless they also came within any of the exceptions in section 4(2)(b) or (c). Under sub-section (b), premises which are the property of the Government of the Federation or of the Government of any State and under sub-section (c) premises which are vested in or acquired by or on behalf of any municipality are free from the operation of the Control of Rent Act.

On this point, the arguments of both counsel were, if I may say so without disrespect, brief. Mr. R. Tan argued that the plaintiff was clearly neither the Government of the Federation of Malaya nor of any State and was not a municipality to come under sub-section (c). Mr. Thayalan, learned counsel for the plaintiff, based his submission entirely on section 4(1A) of the Railway Ordinance, 1948. This section is a new provision making applicable to the Railway Administration the written laws for the time being in force, as they apply to the Government of the Federation.

With the greatest of respect, both submissions, in my view, miss the mark. The question must be in whom is the land in question vested. The title to the land on which the Station Hotel had been erected must therefore provide the answer.

Now, section 15 of the Railway Ordinance, 1948 carries the marginal heading of "Vesting of property." It provides —

"15. (1) Subject to the provisions of section 17 of this Ordinance all property, movable and immovable, which —

(a) immediately before the commencement of this Ordinance was, by virtue of section 92 of the Malayan Union Order in Council, 1946, and the Railway Property (Vesting) Regulations, 1947, made thereunder, vested in the Governor of the Malayan Union for the purposes of the Malayan Railway; or

(b) has been acquired since the coming into operation of the Malayan Union Order in Council, 1946, by His Majesty or by the Governor of the Malayan Union or by any officer of the Government, including officers of the railway, for the purposes of the Malayan Railway and was, immediately before the commencement of this Ordinance, held by His Majesty or by the Governor or such officer for such purposes,

shall, on the commencement of this Ordinance, and without any conveyance, assignment or transfer whatever, vest in the Federal Lands Commissioner for the purposes of the Malayan Railway for the like title, estate, or interest and on the like tenure as the same was vested or held immediately before the commencement of this Ordinance."

Section 17 refers to existing leases and sub-leases of reserved land and has no relevance.

So, at the relevant time of the purported creation of a monthly tenancy by the acceptance of rents tendered and even at the time of the last written lease, the premises were vested in the Federal Lands Commissioner who is an officer incorporated under the Federal Lands Commissioner Ordinance (F.M. Ordinance No. 44 of 1957) for the vesting in him of all properties then vested in the Chief Secretary. I do not with respect think it necessary to belabour the point or to take the history of the land back to 1935 to the days of the Federated Malay States but it is, I believe, abundantly clear that the premises are the property of the Government of the Federation vested in the Federal Lands Commissioner for the purposes of the Malayan Railway Administration and therefore exempt from the operations of the Control of Rent Act, 1966. The defendant's first defence therefore fails.

The next reliance by the defence was on Article 13 of the Federal Constitution. This Article provides that —

"13. (1) No person shall be deprived of property save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation."

It would appear that the defendant claimed that it could not have his lease terminated except on terms as to compensation and indeed, it had counterclaimed for compensation. It however rejected the suggestion that its claim under this head, if maintainable, could be determined at the hearing of the counterclaim but should not hinder the Order 14 application on the contention that the plaintiff's claim was itself bad, *inter alia*, by the mere fact that in attempting to recover possession, it had not offered compensation.

With respect, I cannot accept the validity of the contention. In my view, Clause 1 of Article 13 preserves the right to property as a fundamental liberty which can only be displaced by law while Clause 2 provides for adequate compensation for the compulsory acquisition or use of property. Under a law which enables the Government to acquire or use compulsorily another party's property, the exercise of the right cannot be bad if there has been due process and adequate compensation offered or paid in accordance with the law. Courts of law will undoubtedly rule as *ultra vires* any enactment which deprives a person of his property without offering adequate compensation. For example, in *Bhagwani Kishore Tandon* v. *Deputy Commissioner, Rewa District,*[2] it was held that the Vindhya Pradesh Requisition of Holdings and Premises and Fixation of Rent Ordinance III of 1949 was *ultra vires* to the extent of the non-provision of compensation payable to the tenants in respect of their interests in immovable property. But the defendant must indicate which law it was that purported to deprive it of its property and which it claimed to be *ultra vires* in not offering compensation for such deprivation.

As to this, it is clear beyond argument that on my ruling that the demised premises do not fall within the protective cover of the Control of Rent Act, 1966, the law regulating the relationship of landlord and tenant between the plaintiff and the defendant is the law of contract or the common law. Under this law,

the question in the case of a termination of the lease is not so much deprivation of property as a breach of the contract of lease, if any, for which the real and substantive remedy of the tenant is a suit for damages, or for specific performance. This is clearly evident when the nature of the property in Article 13 is considered.

The parallel article in the Indian Constitution is Article 31 of which Clause 1 reads as follows:

"31(1). No person shall be deprived of his property save by authority of law."

While it has been held, and it is obviously correct to hold that the term "property" is wide enough to cover any interest including a temporary or precarious interest such as that of a mortgagee, lessee or tenant, see *Gendalal Motilal* v. *Mathuradas Ramprasad*,[3] it has also been held in *Jupiter General Insurance Co. Ltd* v. *Rajagopalan & Anor.*,[4] that it means "proprietary rights *in rem*." In that case, the Divisional Court, accordingly, held that the benefit of a contract would not come within the meaning of the term "property" in deciding that the provisions of sections 52A to 52G which had been added by the Insurance (Amendment) Act, 1950 to the Insurance Act, 1938 of India restricting the rights of insurance companies did not amount to the taking of possession of the property of these companies within the prohibition in Clause (2) to Article 31.

In *Bhaget Rajinder Kumar Sawhney & Anor.* v. *State of Jammu & Kashmir & Anor.*,[5] a case dealing with the breach of one of the terms of a lease granted by the State Government and the right of the lessor to resume the property by reason of the breach, the full Bench of the High Court of Jammu and Kashmir held that "liable to resumption" clearly connoted that after the lessee had committed a breach of the terms of the lease, the lessor was entitled to resume the property, *i.e.* to re-enter the property and take possession of it and rejected the contention that the right of the lessee to remain in possession was a fundamental right and could be protected by the Court in these words:

"It is, however, difficult to agree with this contention once it is found that the petitioners have committed a breach of the terms of the lease so as to entitle the respondent to re-enter the premises. The right to remain in possession thereafter cannot be termed by any stretch of the imagination to be a fundamental right so as to attract the provisions of Article 32(2A) of the Jammu and Kashmir Constitution Application Order."

I need refer to only two more cases. In *Rameshwar Proshad* v. *Commissioners, Land Reforms & Jagirs Madhya Barat & Ors.*,[6] it was held that where there was no legal transfer of the title to the trees in favour of the petitioners at any time either by grant of a fresh contract or by an extension of the period of the contracts which had expired, even though the forest officers had allowed the petitioners to work in the forest, the petitioners could not claim that the property in the trees in the areas worked by them passed to them legally through any sale made in their favour by the State or by any duly authorised officer.

Per Wanchoo J. in delivering the judgment of the Supreme Court at page 504:

"Our conclusion therefore is that in all these cases, no legal right to property in the trees passed to the petitioners. It is well-settled that no petition under Article 32 is maintainable, unless it is shown that the petitioner has some fundamental right. The fundamental right claimed in these cases is that the property which the State of Madhya Bharat (now Madhya Pradesh) is not permitting the petitioners to remove from the forests is property which they have a right to hold and dispose of. This could only be so if the property in the trees or the charcoal or kattha which have been manufactured, passed to the petitioners. No such property, however, passed to the petitioners. In the circumstances they have no right to maintain these petitions on the ground that they have a fundamental right to hold and dispose of their property, in the absence of any law authorising the State to deprive them of it."

In *Achutan* v. *The State of Kerala & Ors.*,[7] the facts briefly were that the petitioner had held contracts for the supply of milk to the Government Hospital at Cannanore since 1946. Previous to this, his brother in the same business held similar contracts from 1936. It will be seen therefore that like the defendant in the present case, the petitioner had a long standing contractual relationship with the Government. In 1957 the petitioner and the Co-operative Milk Supplies Society Cannanore submitted their respective tenders for the supply of milk. The petitioner's tender was accepted. Subsequently the petitioner was informed that the contract for the supply of milk given to him was cancelled. He was informed that it was the policy of Government that in the matter of supply to Government medical institutions in Cannanore District, the Co-operative Milk Supplies Union was to be given contracts on the basis of prices fixed by the Revenue Department and not at current market rates which formed the basis of the petitioner's tender. His contract was, after some correspondence, determined by due notice. The petitioner sought under Article 32 which confers a right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights, to rely on Articles 14 and 16(1) guaranteeing equality before the law and equality of opportunity in matters of public employment, on Article 19(1)(g) which guarantees as fundamental the right to carry on any occupation, trade or business and on Article 31, *supra*. The judgment of the Supreme Court was delivered by H. Hidayatullah J. (later C.J.) in these words:

"The gist of the present matter is that breach, if any, of the contract said to have been given to the petitioner which has been cancelled either for good or bad reasons. There is no discrimination, because it is perfectly open to the Government, even as it is to a private party, to choose a person to their liking, to fulfil contracts which they wish to be performed. When one person is chosen rather than another, the aggrieved party cannot claim the protection of Article 14 because the choice of the person to fulfil a particular contract must be left to the Government. Similarly, a contract which is held from Government stands on no different footing from a contract held from a private party. The breach of the contract, if any, may entitle a person aggrieved to sue for damages or in appropriate cases, even specific performance, but he cannot complain that there has been a deprivation of the right to carry on any occupation, trade or business such as is contemplated by Article 19(1)(g). Nor has it been shown how Article 31 of the Constitution may be invoked to prevent cancellation of a contract in exercise of powers conferred by one of the terms of the contract itself."

The law thus seems to be reasonably clear. Where the premises do not come within the protection of the Control of Rent Act, 1966, the relationship between landlord and tenant is generally a matter of contract and the law regulating this relationship is the law of contract or the common law. If the landlord

is in breach of a term of the lease, he can be sued for damages and, in certain circumstances, for specific performance. The Government is in the position of a private lessor. It has no more rights and is under no greater liabilities than an individual. A lessee holding premises of the Government does so on the terms of the lease. His contractual right under the lease is not "property" within the meaning of Article 13. His leasehold interest can be determined by the Government in accordance with the terms of the lease. Such a determination is not deprivation of property within Article 13, and there is no question of his fundamental liberties under the Constitution being affected in such a case. He has no right to remain in possession under cover of a fundamental liberty.

A fortiori, where a lease of uncontrolled premises is determined by effluxion of time, in other words, where a lessee has obtained all that he has bargained for and has enjoyed the full term that was granted to him on a consensual contract, he has no right to hold over after the expiry of the term or to demand a renewal of the lease or a further term, in the absence of any such provision in the expired lease, either in contract or under the common law or under the Constitution. Where there can be no breach of contract as in the case of a lease that has run out in the fullness of time, there is therefore no right to damages or to specific performance. For obvious reasons, I must refrain from further touching on the question of compensation, and I must leave it to the defendant to proceed with its counterclaim for compensation if it is so advised, but it has no property in the premises which would come within Article 13 of the Constitution.

The defendant further argued that the revocation of or refusal to renew the lease and the relevant permits to operate the hotel and its ancilliary facilities offended against Clauses 7 and 8 of Article 153 of the Federal Constitution. This article provides for the reservation of quotas in respect of services, permits and so forth for Malays in order to safeguard their special position. Clause 7 however provides that —

"Nothing in this Article shall operate to deprive or authorise the deprivation of any person of any right, privilege, permit or licence accrued to or enjoyed or held by him or to authorise a refusal to renew to any person any such permit or licence or a refusal to grant to the heirs, successors or assigns of a person any permit or licence when the renewal or grant might reasonably be expected in the ordinary course of events."

Clause 8 provides for a reservation of a proportion of such permits or licences but so as not to deprive or authorise the deprivation of any person of "any right, privilege, permit or licence accrued to or enjoyed or held by him" or authorise a refusal to renew any such permit or licence where such renewal might reasonably be expected in the ordinary course of events.

But with respect the same authorities in my view dispose of this argument as plainly untenable. If the petitioner Achuten could not maintain his objection to the cancellation, much less his claim to a right to a renewal of his contract to supply milk to the hospital for the same constitutional arguments, I cannot, with respect, see how the defendant could be said to have a right to the renewal of the lease or the permits or licences, which were necessary for the operation of a hotel and the services it provided.

This will be seen the more clearly when it is realised that what a licence does is to regulate a business and what a permit does is to provide for something without which a business can never be started. The permits and licences to operate the hotel must be attached to the tenure of the premises and where the defendant had lost its right to a lease of the premises, it could not call for the issue of inoperational and inoperative licences or permits, than which there could hardly be a greater example of an exercise in fatuity. There could be no reasonable expectation for the issue or renewal of the permits or licences where the foundation or basis for their issue, that is, the lease was not there. Finally even if it is true that the reason for not granting the defendant a new lease and new licences and permits is to reserve the same for Malays under the reservations in Article 153, I am nevertheless bound on the law to hold that in the absence of any deprivation of property which the defendant had, it could not for this reason alone demand a renewal of the lease or a grant of a new one, or for the issue of the necessary permits or licences for these premises. If in India, with the provisions of equality in Article 14 and the protection *inter alia* of the right of all citizens to carry on any occupation, trade or business, subject to certain provisions in the interest of the country in Article 19(1)(g), the same petitioner Achutan could not succeed, his chances of success would be even less in this country with its specific constitutional reservations for the special position of the Malays.

The facts of the present case are that the defendant's lease has expired and the implied monthly tenancy that was said to have arisen from the acceptance of rent tendered and received after the expiry has been duly determined by a calendar month's notice, as to the sufficiency of which, its counsel has not questioned. In the circumstances and applying the law which I hope I have correctly set out, the defendant has no right to remain or any hope or expectation of a further term.

This should conclude the matter but there is in the written submission an allegation of an "irrevocable licence coupled with an interest in the premises". This defence was however not raised in the pleadings and I am extremely doubtful whether the defence could raise this equity, known generally as an irrevocable licence coupled with a grant, as raised in *Ramsden* v. *Dyson*[8] and followed by the Privy Council in *Plimmer* v. *The Mayor, etc. of the City of Wellington*,[9] particularly as no facts had been alleged of an expectation or hope of a grant encouraged by the landlord and causing the lessee to alter his position for the worse by an expenditure of money. In any event, having regard to the central fact of a concluded agreement between the parties, it must be apparent that the defendant's case if it could allege any expenditure of money, falls within the second limb of Lord Kingsdown's speech in *Ramsden* v. *Dyson, supra*, at page 170 rather than the first. The second is in these words:

"If on the other hand, a tenant being in possession of land and knowing the nature and extent of his interest, lays out money upon it in the hope or expectation of an extended term or as allowance for expenditure, then, if such hope or expectation has not been created or encouraged by the landlord, the tenant has no claim which any court of law or

equity can enforce. This was the principle of the decision in *Pillay* v. *Armitage* 12 Vesp. 78 and like the decision in *Gregory* v. *Miguell* (18 Vesp. 328) seems founded on plain rules of reason and justice."

Indeed its case seems to me to be more akin to *Soong Co. Ltd.* v. *Teoh Cheng Sim*[10] than to *Lee Eng Teh & Ors.* v. *Teh Thiang Seong & Anor.*[11] In other words, there is, with respect, no substance in this contention.

Finally, I note in the defence that had been delivered a claim in respect of excess payments of rents. This was not touched upon in the submissions, either orally or in writing, but again if there is any truth in it, it must be the subject of the counterclaim and it could not stand in the way of the claim to possession which was otherwise well-founded.

All this is perhaps unfortunate for the defendant. To its directors and shareholders, the business at the Station Hotel in Kuala Lumpur may well have become a way of life. Its patrons may regret the passing of yet another landmark and with some nostalgia may soon miss all that this established service means. But the whole point is that on the facts in the pleadings and on the law, the defendant has no right which any court of law or equity can enforce.

There must therefore be an order for possession and for costs.

I now invite counsel to work out the exact terms of the order.

FEDERAL COURT.

Ralph Hoffman (*Roger Tan* with him) for the appellant.

K. Thayalan for the respondent.

Gill C.J. (Malaya): This is an appeal from the judgment of Chang Min Tat J. on an Order 14 application requiring the appellant as defendant in the action to deliver to the respondent as plaintiff vacant possession of premises known as "Station Hotel Kuala Lumpur" and situate on Railway Reserve Lot No. 13.

The facts of the case are not in dispute. The defendant has been the tenant of the premises since 1935 under a series of leases, the details of which are immaterial. The tenancy was finally terminated by a calendar month's notice expiring on March 31, 1975. The plaintiff is a corporation sole under section 4(1) of the Railway Ordinance, 1948. Under section 15(1) of the Ordinance, all "railway land" is vested in the Federal Lands Commissioner, a public officer appointed under the Federal Lands Commissioner Ordinance, 1957, for the purposes of the Malayan Railway. Sections 21 and 22 of the Ordinance empower the plaintiff to grant leases of immovable property and railway reserves. The plaintiff's right to enter into contracts and sue and be sued thereon is contained in section 4(2) of the Ordinance.

To the application by the plaintiff for judgment under Order 14 the defendant raised three defences in law. The first of such defences was that the premises are rent controlled premises. It is common ground that the premises were built before January 31, 1948 so that they are rent controlled under section 4(1) of the Control of Rent Act, 1966, unless they are the property of the Government of the Federation or of the Government of any State, in which case they are free from the operation of the Act by virtue of section 4(2)(b).

At the hearing before the learned judge, counsel for the defendant argued that the plaintiff was clearly neither the Government of the Federation of Malaya nor of any State. Counsel for the plaintiff based his submission entirely on section 4(1A) of the Railway Ordinance, 1948 which makes applicable to the Railway Administration the written laws for the time being in force in the same manner as they apply to the Government of the Federation. The learned judge took the view that both submissions missed the mark, as the question to be decided was in whom the land in question was vested. In his opinion, the title to the land on which the Station Hotel had been erected must provide the answer to that question. In this connection, having considered the provisions of section 15 of the Railway Ordinance, 1948, the learned judge arrived at the conclusion that as the premises are vested in the Federal Lands Commissioner for the purpose of the Malayan Railway Administration they are the property of the Government of the Federation and therefore exempt from the operation of the Control of Rent Act, 1966. He therefore ruled that the first defence must fail.

The defendant's second defence in law was founded on Article 13 of the Constitution which provides (1) that no person shall be deprived of property save in accordance with law and (2) that no law shall provide for the compulsory acquisition or use of property without adequate compensation. It was contended that in attempting to recover possession of the premises the plaintiff had not offered compensation to the defendant. The learned judge found no validity in that contention because the defendant failed to indicate which law it was that purported to deprive it of its property and which it claimed to be *ultra vires* in not offering compensation for such deprivation. Clearly there was no question of compulsory acquisition of property in this case so as to entitle the defendant to any compensation.

As regards deprivation of property save in accordance with law, the learned judge held that the question in the case of termination of the lease is not so much deprivation of property as of a breach of the contract of lease, if any, for which the real and substantive remedy of the tenant is a suit for damages or for specific performance. As the grounds of appeal arising out of the rejection of this second defence have been abandoned, I do not think it necessary to deal with this question any further.

The third and last defence in law raised by the defendant was based on Article 153 of the Constitution which provides for the reservation of quotas in respect of services, permits and so forth for Malays in order to safeguard their special position. Clause 7 provides: —

"Nothing in this Article shall operate to deprive or authorise the deprivation of any person of any right, privilege, permit or licence accrued to or enjoyed or held by him or to authorise a refusal to renew to any person any such permit or

licence or a refusal to grant to the heirs, successors or assigns of a person any permit or licence when the renewal or grant might reasonably be expected in the ordinary course of events."

The learned judge found no merit in this defence for the reasons which are set out in his judgment as follows.

What a licence does is to regulate a business and what a permit does is to provide for something without which a business can never be started. The permits and licences to operate the hotel must be attached to the tenure of the premises, so that where the defendant had lost its right to a lease of the premises, it could not call for the issue of inoperational and inoperative licences or permits. There can be no reasonable expectation for the issue or renewal of the permits or licences where the foundation or basis for their issue, that is, the lease, was not there. Even if it is true that the reason for not granting to the defendant a new lease and new licences and permits was to reserve the same for Malays under the reservations of Article 153, for that reason alone, in the absence of any deprivation of any of its property, the defendant could not demand a renewal of the lease or the grant of a new one, or for the issue of the necessary permits or licences for the premises in question. The facts of the present case are that the defendant's lease has expired and the implied monthly tenancy that was said to have arisen from the acceptance of rent tendered and received after the expiry has been duly determined by a calendar month's notice, the sufficiency of which was not questioned. In the circumstances the defendant has no right to remain or any hope or expectation of a further term.

The appeal before us was argued on two main grounds. The first ground is that the learned judge was wrong in finding that the appellant is not a tenant protected by the provisions of the Control of Rent Act, 1966. The argument in support of this ground is that as the land on which the hotel stands is vested in the Federal Lands Commissioner for the purposes of the Malayan Railway, it is not the property of the Federal Government but that of the Malayan Railway which is a statutory corporation under the Railway Ordinance, 1948, but that the Federal Lands Commissioner is nothing but a trustee for the Malayan Railway. I do not think this argument is tenable because the fact that the land is vested in the Federal Lands Commissioner, an officer of the Federal Government appointed for that purpose, shows that the land belongs to the Government.

Although the land is vested in the Federal Lands Commissioner, the respondent is authorised by the Railway Ordinance to enter into contracts in respect of such land and to sue and be sued thereon in its own name. That is what has happened in the present case. It is true that the respondent is not the registered owner of the premises, as averred in the statement of claim, but its right to sue for the recovery of possession of the premises has never been in question. For instance, it was never the appellant's case that the proper person to sue was somebody other than the respondent.

Assuming that the land on which the hotel stands is the property of the Malayan Railway, as argued by the appellant, the premises are still exempt from the operation of the Control of Rent Act, 1966 because that Act applies to the Railway Administration in the same manner as it applies to the Government of the Federation by virtue of section 4(1A) of the Railway Ordinance, 1948. This was the argument taken by the plaintiff before the learned judge in the court below. Although the learned judge ruled that that argument missed the mark, with respect it was a complete answer in itself to the defendant's claim that the Control of Rent Act, 1966 does not apply to the premises.

The second main ground of appeal is that the learned judge was wrong in holding that the revocation or refusal to renew the relevant leases and terms in favour of the appellant does not offend the provisions of Article 153 Clauses 7 and 8 of the Federal Constitution. In my judgment the learned judge was not wrong in so holding because of the reasons which he has stated in his judgment in such lucid terms, with which I entirely agree with respect.

All that counsel for the appellant said on this ground was that this was not a proper matter to be dealt with on the basis of Order 25. There was a similar argument in relation to the first ground. And it was submitted generally that as the defendant had raised several triable issues it should have been granted leave to defend. In my opinion the issues raised were all issues of law which were rightly disposed of by the learned judge under Order 14 and on the basis of Order 25 of the Rules of the Supreme Court, 1957.

The issues in this case are simple issues of law. There is no dispute about the facts. The land on which the hotel stands is vested in the Federal Lands Commissioner. It is therefore the property of the Federal Government, so that it is exempt from the operation of the Control of Rent Act by reason of section 4(2)(b). Assuming that the land is the property of the Malayan Railway Administration, even then the Control of Rent Act does not apply to it because of section 4(1A) of the Railway Ordinance. Article 153 of the Constitution, in my judgment, has no application to cases of contractual rights.

I would dismiss this appeal with costs.

Ali F.J.: In this appeal two questions fall to be considered, namely (a) whether the Station Hotel, Kuala Lumpur is controlled premises subject to the Control of Rent Act, 1966; and (b) whether the refusal by the Railway Administration to renew the lease of the Hotel to the appellants, Station Hotels Berhad, was a breach of Clause (7) of Article 153 of the Federal Constitution.

On an application by the Malayan Railway Administration for summary judgment under Order 14 Chang Min Tat J. answered both questions in the negative and saying in his judgment that he was disposing of them before trial under Order 25.

In the memorandum of appeal nothing turned on Order 25 but counsel for the appellants did submit that it was inapplicable. In my view as counsel for both parties had argued the two questions fully before him the learned judge must have assumed in terms

of rule 2 of the Order both parties consented to have the questions decided before trial. In any case as under Order 14 rule 1(a) the learned judge would have to be satisfied whether or not the appellants have a good defence to the action it was necessary for him to consider the two questions. Having disposed of that I shall proceed to deal with the two questions.

Both questions (a) and (b) arose out of an action by the Malayan Railway Administration to recover possession of the Hotel building which had been leased to the appellants under an agreement of lease dated sometime in 1968. Although the period of the lease had expired the appellants remained in occupation as yearly tenants under agreements during 1973 and 1974. In July 1974 there was an attempt to terminate the tenancy by notice to quit which was followed by an action for possession. Having doubts as to the effectiveness of the notice the Malayan Railway Administration decided to withdraw the action. A fresh notice was issued terminating the tenancy on or before March 31, 1975. The appellants did not quit and the Railway Administration commenced the action in these proceedings. Although several questions were raised in the defence pleadings only the two questions referred to above fall to be determined in this appeal.

Question (a) arose out of the appellants' contention that inasmuch as the Hotel was admittedly constructed or completed *before* January 31, 1948 it is controlled premises subject to the Control of Rent Act, 1966. The respondents, however, maintained that the Hotel is not subject to the Act being the property of the Government of the Federation within the meaning of section 4(2)(b) or alternatively even if it is not the property of the Government but the property of the Malayan Railway Administration it is not subject to the Control of Rent Act, 1966 by reason of section 4(1A) of the Railway Ordinance. Section 4(1A) provides —

"The written laws for the time being in force in the Federa tion or in any part thereof shall, except where otherwise expressly provided, apply to the Railway Administration in the same manner as they apply to the Government of the Federation and any person in the service of the Railway Administration shall, except where otherwise expressly provided by any other written law, be deemed to be also in the service of the Government of the Federation."

The learned judge did not think this provision relevant. I respectfully agree. It is, as it seems to me, a deeming provision, the object of which was to extend any written law applicable to a Government servant to "any person in the service of the Railway Administration". If the object was to extend any written law applicable to Government property to the property of the Railway Administration, as was argued by Mr. Thayalan, counsel for the respondents, section 4(1A) would have been differently worded. I would also observe that the section was incorporated in the Railway Ordinance long before the Control of Rent Act, 1966 came into force.

The learned judge was apparently of the view that the vesting of property in the Federal Lands Commissioner under section 15 of the Railway Ordinance has the effect of making any immovable property acquired or purchased under section 14 for the purpose of the Malayan Railway the property of the Government. The fact, however, is that the land in question could not have been acquired or purchased under section 14. In paragraph 1 of the statement of claim it is referred to as Railway Reserve Lot No. 13 which could only mean that it is one of the railway reserves mentioned in section 18(8) of the Railway Ordinance. Reserved lands are not alienated lands which can be acquired or purchased. They are not vested in any person or authority. In the case of Railway reserves they are lands reserved for railway purpose which is Federal purpose. See section 10(b) of the Federal List in the Ninth Schedule to the Federal Constitution. Clause (3) of Article 85 of the Constitution provides that land in a State which is reserved for federal purpose shall not cease to be so reserved and all lands so reserved shall be controlled and managed by or on behalf of the Federal Government.

In my opinion the land on which the Station Hotel stands is land reserved for Federal purpose controlled and managed by the Railway Administration for and on behalf of the Federal Government. For all practical purposes it can be regarded as the property of the Federal Government. The word "property" in section 4(2)(b) of the Control of Rent Act, 1966 is not defined so as to mean, as regards immovable property, land which is registered in the name of the Federal Government. The answer to question (a) must, therefore, be that the Station Hotel land is the property of the Federal Government not subject to the Control of Rent Act, 1966.

Question (b) can be disposed of in a few words. The arguments on behalf of the appellants was that the refusal by the Malayan Railway Administration to renew the agreement of lease to the appellants was a breach of clause (7) of Article 153 of the Federal Constitution. Strictly speaking clause (7) merely declares that nothing which is done under Article 153 shall operate to deprive any person of any rights to any permits, licences etc. In other words any reservation of quotas in respect of such matters shall not operate to deprive others of their rights to the same thing. In this case there was no evidence that the agreement of lease was being reserved for Malays under the Article. The complaint by the appellants in their affidavit was that since the agreement had been renewed 20 times the refusal to renew it was a breach of clause (7) of the Article. I am clearly of the view that there was no breach.

Under section 22(1)(a) of the Railway Ordinance the General Manager is empowered to grant leases of railway reserves for a period of thirty years subject to such terms and conditions. In other words the General Manager has the power to enter into a contract in respect of reserved lands. If at all there was a right to renewal it could only arise from such contract. The answer to question (b) is clearly that there was no breach of Article 153 of the Federal Constitution by reason of the failure to renew the lease.

A question was also raised under Article 13 of the Constitution but this was not proceeded with at the hearing of this appeal.

On the answers given to the two questions above I agree that this appeal be dismissed with costs.

Ong Hock Sim F.J.: With respect, I disagree with the learned judge.

To my mind, the issue is one of simple interpretation. Are the premises rent-controlled and entitled to protection of the Control of Rent Act, 1966? It is undisputed that the premises were constructed before January 31, 1948. What is up for decision is whether the premises in question is property of the Government of the Federation within the meaning of section 4(2)(b) of the Control of Rent Act and therefore outside the *ambit* of the Act. I am of the view that it is not necessary to deal with the other grounds.

My main concern, without indulging in arguments as to vesting, and other questions as to present entitlement to the property concerned, is who is the owner in law. The suit is not instituted by the Government of Malaysia in the first instance. The Malayan Railways may have been conferred with a status of some sort, but it is *not* the Government of the Federation nor is the Federal Government in any way invested with proprietary rights over the Station Hotel. True, Railway property is now vested in the Federal Lands Commissioner by virtue of section 15 who holds it "for the purposes of the Malayan Railway." He is, in my view, a trustee of the land for the Railway. Such vesting does not divest the Railway of its rights and effect a transfer of the property to the Government.

Here, I may advert to paragraph 1 of the statement of claim. This reads: —

"1. The plaintiff is a corporate body established under the Railway Ordinance 1948, and is the registered owner of the premises constituting 'Station Hotel Kuala Lumpur' and held under the Railway Reserve Lot No. 13 in the district of Kuala Lumpur (hereinafter referred to as the said premises)."

In the light of the pleadings, it was, in my view, not open to the learned judge to depart therefrom and hold the premises to be the "property of the Government of the Federation." I do not need to deal with estoppel.

I am not prepared to hold that the issue in this case is as crystal clear and I do not think it a fit case for invoking Order 14 or Order 25.

I would allow the appeal and direct that unconditional leave to defend be granted to the appellants. Costs of this appeal and in the court below to appellants. Deposit refunded.

Appeal dismissed.

Solicitors: *Allen & Gledhill; Skrine & Co.*

CHU CHU LOCK v. CHU MEK CHUAN & ANOR.

[O.C.J. (Abdul Razak J.) November 9, 1975]

[Kota Bharu — Civil Suit No. 10 of 1972]

Practice and Procedure — Locus standi — Claim arising out of a collateral dispute — Plaintiff not a party to earlier suit — Whether claim could be entertained — Small Estates Distribution Ordinance, 1955, s. 14.

The plaintiff in this action claimed as being entitled to the piece of land in question. The action purportedly arose out of a collateral dispute in a distribution suit before the Collector between the first defendant and the second defendant of the estate of the deceased. The first defendant had claimed a half share in respect of the said land on the basis of *'harta sepencharian'*, and said that the deceased's daughter (the second defendant) was entitled to a share in the land only after her. The second defendant, on the other hand, contended that the father told her he wanted to give the land to her as he had already given a piece of land to her step-mother. As the dispute could not be resolved by the Collector, the parties were asked under section 14 of the Small Estates Distribution Ordinance to take the matter to court.

The first defendant did not bring an action as ordered by the Collector. Instead, the plaintiff, supposedly the adopted son of the deceased, made his appearance, suing his adopted mother, the first defendant and the second defendant, claiming that the said land was in fact given to him by the deceased and the first defendant. The first defendant did not contest the appearance and did not file a defence to it. The second defendant, however, sought the court to set the plaintiff's claim aside. She argued that the plaintiff had no cause of action as he was not a party to the suit before the Collector.

Held, dismissing the plaintiff's action: the plaintiff could not seek to bring an action purportedly under the Collector's direction because he was not a party to the suit earlier and therefore had no *locus standi* here.

CIVIL SUIT.

A. Wilson for the plaintiff.

Foo Say Ghee for the defendants.

Abdul Razak J.: The plaintiff in this action claimed as being entitled to land Lot No. 3551, Mukim Pasir Genda, District of Tanah Merah held under NEMR 582. The action purportedly arose out of a collateral dispute in a distribution suit before the Collector between the 1st defendant Chu Mek Chuan the wife and the 2nd defendant Keong Kim Bee the daughter of and over the estate of one Chiong Tie Soon, deceased. At the suit the 1st defendant had claimed a half share in respect of the said land on the basis of 'harta sepencharian'. She said that the deceased's daughter was entitled to a share in the land only after her. She claimed then that she and the 2nd defendant were the only beneficiaries to the estate, she being the second wife and the 2nd defendant being the daughter of the said Chiong Tie Soon by his first wife Wee Mek Kion. She mentioned there were two pieces of land owned by the deceased one of which was given to her and the other was registered in the deceased's name. She claimed however that she also had a share in the latter on the basis of 'harta sepencharian'. This was the land which was in dispute. The said daughter Keong Kim Bee however denied that the land in the deceased's name was held by her father as 'harta sepencharian'. She said that the father told her he wanted to give the land to her as he had already given a piece of land to her step-mother. The matter being thus a collateral dispute could not be resolved by the Collector. The parties were asked under section 14 of the Small Estates Distribution Ordinance to take the matter to court.